

JUSTICE COMMITTEE

VULNERABLE WITNESSES (CRIMINAL EVIDENCE) (SCOTLAND) BILL

SUBMISSION FROM NSPCC SCOTLAND

Key Points

Our justice system is currently unfit for children. The overwhelming majority of child witnesses go to court to give evidence where they can endure searing cross-examinations from lawyers which they find upsetting and confusing.¹

NSPCC welcome the proposed measures which allow evidence to be taken from child witnesses in advance of court hearing, in solemn cases.

We would strongly urge the Government to go further to ensure that children who experience domestic abuse will also benefit from these hugely important measures.

Our ultimate aim is to secure whole system reform of the justice system in Scotland to better meet the distinct needs of children. In the interim, we believe all children should be spared the trauma of giving evidence in a formal court environment.

Part 1 – Child Witnesses in certain solemn cases

Q. Do you agree with introduction of the “new rule” that child witnesses in the most serious cases must give all their evidence in advance of a criminal trial? Do you have any views on how this new rule should be implemented?

NSPCC strongly welcomes the progress being made towards all child witnesses giving their evidence in advance of a criminal trial, as standard. We are concerned however, that the protective provisions in the current bill will only be available to child witnesses in solemn cases.

We are aware that a move towards the greater pre-recording of evidence will have implications for the criminal justice system and may necessitate a phased approach. However, limiting the first phase of reform solely to solemn cases means that very large numbers of vulnerable children, potentially giving evidence in domestic abuse cases, will not benefit and be protected within the system.

Indeed, our reading of the bill as introduced at stage 1 suggests that that the provisions will not be available for child witnesses in *any* domestic abuse cases, even in the tiny minority of domestic abuse cases being heard in solemn court proceedings.

¹ <https://www.nspcc.org.uk/what-we-do/campaigns/order-in-court/>

We in Scotland have long since recognised the potentially corrosive impact of domestic abuse on child health and wellbeing. Domestic abuse is understood as a significant risk to child welfare and a risk to their safety. Research evidence tells us unequivocally that domestic abuse is a key factor in child abuse and neglect. The most recent prevalence information indicates that across the UK, a third of children who experience domestic abuse also experience another form of abuse. Domestic abuse was found to be a factor in over half of all serious case reviews conducted in England.² In Scotland, domestic abuse was a factor in 63% of Serious Case reviews between 2012-2015.³ In our own NSPCC services, domestic abuse is a core problem experienced by the majority of families whose children are being looked after.

Our understanding is that the overwhelming majority of domestic abuse cases are tried in the summary courts in Scotland, meaning highly vulnerable child witnesses may not enjoy the protection from further trauma that the new provisions offers.

We strongly urge the Committee to ensure the bill is amended at the very least in order that the protective measures are in place for child witnesses in a) any solemn cases involving domestic abuse and b) any case brought under the Domestic Abuse (Scotland) Act 2018.

If the protective measures proposed in the bill do not pertain to children in domestic abuse cases, the bill is considerably out of step with the direction of policy reform and practice, enacted and on-going in Scotland for well over a decade, including in the Children's Hearing (Scotland) Act 2011, the Joint Police Scotland and Crown Office & Procurator Fiscal Service Protocol, the Family Law (Scotland) Bill 2006 and in the current review of family law in Scotland.

We will keep the views and best interests of any children at the forefront of our consideration when investigating and prosecuting cases involving domestic abuse.

(Joint Protocol⁴)

Most critically, this bill must dovetail with Scotland's world leading domestic abuse legislation, covering psychological abuse and controlling behaviour, so passionately

² Sidebotham, P. et al (2016) [Pathways to harm, pathways to protection: a triennial analysis of serious case reviews 2011 to 2014: final report \(PDF\)](#).

³ <https://www.theguardian.com/society/2018/feb/01/scotland-set-to-pass-gold-standard-domestic-abuse-law>
<https://inews.co.uk/news/uk/scottish-parliament-passes-world-leading-domestic-abuse-law/>
<http://www.careinspectorate.com/images/documents/3352/Learning%20from%20Significant%20Case%20Reviews%20in%20Scotland%202012-%202015.pdf>

⁴ Joint Protocol between Police Scotland and the Crown office & Procurator Fiscal Service In Partnership Challenging Domestic Abuse
http://www.scotland.police.uk/assets/pdf/keep_safe/175573?view=Standard)

welcomed recently in the Scottish Parliament – and universally across the UK.⁵ The offence, which introduced a statutory aggravation in relation to a child, recognises the impact of domestic abuse on children in the criminal law. The Act also extends post trial protection to children as well as adult victims of domestic abuse, reflecting the reality that the criminal trial is simply a stage in the journey to safety, for adult and child victims of domestic abuse, rather than an end to the abuse. Protecting child witnesses in domestic abuse cases brought to any court is essential, in order that the criminal law is fully protecting children **throughout** the judicial process and not, irrationally, at one end only.

Children with disabilities

NSPCC also considers it imperative that the committee considers how the bill might need amended to ensure that children with disabilities are fully protected by the proposed protective measures from the outset. Children with disabilities are at elevated risk of all forms of abuse and neglect. Studies have found disabled children to be between 2-3 times more likely to be sexually abused than non-disabled children. Children with learning disabilities are among the highest risk groups for sexual abuse and exploitation.⁶ Whilst known cases of child abuse will appear in the solemn cases, this potentially leaves children with disabilities, who are giving evidence in summary cases, exposed to potential trauma.

Difficult climate

The needs of various groups of children strongly support an overarching rationale of including all children in the first phase of the roll out of this significant legislation. In the absence of the bill being amended to this effect, we would strongly urge the committee to explore how the commitment in the bill to extending the measures to all vulnerable witnesses might be strengthened, in order that the difficult climate around resources does not dictate the way forward in relation to protecting all children in the criminal justice process.

⁵ <https://inews.co.uk/news/uk/scottish-parliament-passes-world-leading-domestic-abuse-law/>
<https://www.scotsman.com/news/opinion/leader-comment-scotland-gets-world-leading-law-on-domestic-abuse-1-4680498>
<https://www.theguardian.com/society/2018/feb/01/scotland-set-to-pass-gold-standard-domestic-abuse-law>

⁶ Sullivan P.M. and Knutson, J.F. (2000) Maltreatment and disabilities: a population based epidemiological study. *Child Abuse and Neglect* 24, 10, 1257-1273.; Brown, S. et al.,(2016) *Child sexual abuse and exploitation: understanding risk and vulnerability*. London: Early Intervention Foundation.; Jones, L et al (2012) Prevalence and risk of violence against children with disabilities: a systematic review and meta-analysis of observational studies. *The Lancet* July 2012. 69 Stalker, K., Green Lister, P., Lerpiniere, J.et al (2010) *Child protection and the needs and rights of disabled children and young people: a scoping study*. Glasgow: University of Strathclyde. 7

The child accused

NSPCC is disappointed that the protective provisions around pre-recorded evidence do not pertain to the child accused, further shining a light on the fundamental contradiction in the way the law deals with children in Scotland.

A child's right to access justice is equally applicable to a child victim and a child accused. There is a wealth of robust evidence that children involved in a pattern of offending, or who are involved in more serious offences, are almost always our most vulnerable, victimised and traumatised young people. The link between vulnerability and offending is retrospective not predictive, in that most children who experience adverse childhood experiences and trauma *do not* go on to seriously offend, but children who are involved in serious offending or frequent offending **almost always** have experienced trauma.⁷

The complex emotions associated with early and sustained trauma can often manifested as anger, aggression, difficulty concentrating, risk-taking behaviour and substance misuse, and are subsequently interpreted (and therefore responded to) as 'bad behaviour' from a very early age.⁸

In Scotland, we pride ourselves on the Kilbrandon principles of responding compassionately to a child's needs as well as their deeds, yet we routinely expose our most vulnerable children to an adversarial and potentially traumatising court process. As well as managing the risks posed by children who offend, we need to support them to maximise their life chances and minimise the likelihood of them re-offending.

Our goal should be that no child under 18 should need to give evidence in adult courts, where there is a risk of re-traumatising and the focus is not a welfare based system which takes account of their needs as well as their deeds. This would ultimately not only be in line with the requirements of the UN Convention on the Rights of the Child (UNCRC) but would meet the Scottish Government's aim of Scotland being the best place to grow up - Getting It Right for Every Child.⁹

We urge the committee to explore how the bill might include a commitment of a future phase fully considering the need of the child accused.

⁷ 81% of children under the age of 12 who were referred to the Children's Hearing System because of a pattern of offending had parents who posed a risk to them; 43% had mental health difficulties; 70% had educational problems; 30% had been the victims of physical or sexual abuse.⁷ 76% of children who pose the most serious risk to others, supported by our IVY (Interventions for Vulnerable Youth) Project, have experienced domestic violence and 88% some other form of maltreatment.⁷ 70% of young people placed in one secure care centre had a previous or current mental health diagnosis.⁷ More than half of young women placed at another had experienced six or more adverse childhood experiences, sometimes referred to as ACEs.⁷

⁸ <http://www.cycj.org.uk/wp-content/uploads/2017/08/Strengths-needs-and-ACES-in-Young-Women-1.pdf>

⁹ Scottish Government Getting It Right for Every Child (Scottish Government, 2008).

Part 1 – other issues

NSPCC is concerned that Part 1, section 8 of the bill may be incompatible with the UNCRC. The age of a child – in this case 12 – should not be regarded in and of itself, as justification for an exception to the rule around the pre-recording of evidence, with no consideration of the best interest of the child, including their developmental stage and vulnerabilities.

Part 3 – Deemed vulnerable witnesses in certain solemn cases

Q. The Bill would allow in the future for this new rule to be extended to other vulnerable witnesses, including adult “deemed vulnerable witnesses”. Do you agree with this approach and, if so, to whom would you extend the provisions?

As above, NSPCC acknowledges the resource implications of the bill and the need for a phased approach. Subsequently, we welcome that the bill provides the framework for extending the use of pre-recorded evidence in the future, to include all deemed vulnerable witnesses including adult witnesses.

In relation to our specific mission as an organisation to prevent child abuse, we are critically aware that the vast majority of children who experience abuse during childhood do not come to the attention of statutory services during childhood. At the same time, Adverse Childhood Experiences (ACES) research confirms the link between adverse childhood experiences such as abuse, domestic violence and parental mental health problems and drug addiction, as significantly increasing children’s chances of experiencing problems in adulthood, potentially deeming them ‘vulnerable adults’.

Extending protections to vulnerable adults will potentially allow more historic cases of abuse to be brought by adults rendered vulnerable through their childhood experiences. Evidence around repeat victimisation further confirms our duty to protect vulnerable adults fully within the criminal justice system. Extending these essential measures to all vulnerable adults giving evidence in criminal court must be a core part of a ‘public health’ response to sexual abuse and other forms of childhood abuse, in order to enable access to justice at any stage in the victim’s life.

Q. The Scottish Government considers that the proposals in the Bill will have significant implications for the criminal justice system. Do you have any views on the practical, financial or other impacts of the Bill, including the proposed phased roll-out of the provisions in this Bill?

Although we recognise that wholesale change of the system will take time, we are resolute that urgent, bold action is required to improve children’s access to justice in Scotland. We do not accept that the current bill on its own will sufficiently improve the situation for child victims and witnesses.

To move beyond the bolting on of ‘special measures’ to an adult-orientated system, towards a genuinely child-centred justice system, we continue to call for whole-system change to address the deficits in the existing criminal justice system, which is wholly unsuitable for vulnerable children and young people. Whilst we are fully aware that court practitioners and legal professionals have had to respond and adapt to a number of legislative changes providing for vulnerable witnesses over the past decade, we are clear that the existing situation for children involved in the criminal justice system is a violation of their rights and must be urgently addressed.

We enormously welcome the Scottish Government’s commitment within Equally Safe to explore the applicability of developing a ‘Barnahus’ concept for children who experience abuse and violent crime, and the recent setting up of a new **Violence Against Women and Girls (VAWG) and Barnahus** team within the Justice Directorate. We believe that a Scottish model should include the following elements:

- A process for initially speaking out about abuse and a professional response that is child centred and at the child’s own pace.
- Therapeutic recovery recognised as a *fundamental purpose* of obtaining a child’s disclosure, in addition to serving the needs of criminal justice.
- A custom built, child-friendly centre making the experience less traumatic for children, and more focused on their needs.
- Highly trained interviewers, experienced in child development, child communication and child protection best practice, who take into account children’s rights and their individual needs.
- A child attends just one forensic interview hearing which is observed and guided by a judge and legal representatives for the defence, prosecution and victim.
- The interview consists of a structured approach according to established protocols. The interviewer is the only person who questions the child witness and all other people are in another room watching via video link.
- The hearing happens as soon as possible following the child’s complaint.
- Steps are taken to consider how an inquisitorial approach could be used with children and young people (contrary to the current Scottish adversarial approach). At the very least cross examination should be kept to a minimum, with any questions reviewed for suitability beforehand.
- Reduction of waiting times and delays for children and families.
- Access to family support and advocacy workers to keep children and young people and their families informed throughout the process.
- Access to therapeutic and medical support as required that includes intensive trauma recovery support. Medical examinations and support services should be located in one place and should take into account the overall wellbeing of the child or young person.

Other issues

We would urge the Committee to use this opportunity to begin a process of reflection on the continued existence of the criminal offence of 'plagium' in Scotland. In our understanding, the retention of such a crime - which considers a child the legal property of an adult - is fundamentally out of step with the UNCRC and the Scottish Government's efforts to ensure children are fully recognised as rights holders in society. We understand the Scottish Government is soon to consult on furthering children's rights in Scotland: reviewing and reforming this archaic and anachronistic law is an important part of this endeavour.